

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT KEITH ERNST,

Plaintiff,

v.

DAVID FRANCES RAMOS, et al.,

Defendants.

No. 2:21-cv-0813 DAD AC P

ORDER

On October 25, 2023, the court ordered service of the complaint on defendant Beck via the court's e-service program. ECF No. 31. However, process directed to defendant Beck was returned unserved because defendant Beck has resigned from the California Department of Corrections and Rehabilitation (CDCR) and the CDCR has no contact information. ECF No. 37. Plaintiff was then ordered to use the means available to him to obtain additional information to serve Beck and provide that information to the court. ECF No. 38. He was advised that if access to the required information was denied or unreasonably delayed, he could seek judicial intervention. Id. Plaintiff has now filed a request for assistance in serving defendant Beck. ECF No. 45.

In his motion, plaintiff states that he has attempted to obtain Beck's information from the litigation coordinator and had family attempt to locate Beck through social media, but all attempts have been futile. ECF No. 44-1 at 3; ECF No. 45. He requests the court order the U.S. Marshal

1 to locate and serve defendant Beck. ECF No. 45. The court previously indicated that service was
2 unable to be completed on defendant Beck because the CDCR had no contact information (ECF
3 No. 38), and plaintiff's requests to the litigation coordinator at the prison appear to confirm that
4 the CDCR has no contact information for this defendant (ECF No. 44-1 at 1-2; ECF No. 45 at 2).

5 The court cannot order the CDCR to provide information they do not have. However, in
6 the interests of justice, counsel for defendants Ashe, Miller, Nelson, Singh, Ramos, and Wong¹
7 will be directed to conduct a good faith inquiry to identify a last known business or personal
8 address at which Beck can be served and file such address with the court.² See Penton v. Pool,
9 724 F. App'x 546, 550-51 (9th Cir. 2018) (district court erred in placing the onus on an
10 incarcerated plaintiff proceeding in forma pauperis to provide the necessary documentation to
11 locate a defendant beyond identifying the defendant to the U.S. Marshal). If counsel cannot
12 ascertain an address at which Beck can be served, they should inquire into and provide any other
13 information that could assist in locating Beck,³ such as a professional license number.⁴ If counsel
14 is unable to identify any address for service or identify any other information that would assist in
15 locating Beck, they shall so inform the court.

16 In ordering defendants' counsel to assist the U.S. Marshal in locating defendant Beck, the
17 court is not absolving plaintiff of his responsibility to continue attempting to locate this
18 defendant. If the U.S. Marshal remains unable to locate Beck for service and the court is satisfied
19 with their attempts to locate Beck, it will be recommended that Beck be dismissed for failure to
20 complete service. Id. at 551 ("If the district court is satisfied that the Marshals have fulfilled their
21 obligation to search for a viable address where [defendant] can be served, then it would act within
22 its discretion to dismiss the action against [defendant] under Rule 4(m)."). Plaintiff should
23 therefore continue his efforts to locate defendant Beck and provide the court with any additional
24 information he may discover that would assist with the completion of service.

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26 ¹ These defendants are represented by the Attorney General's Office.

27 ² If the address identified is a personal address, it may be filed under seal.

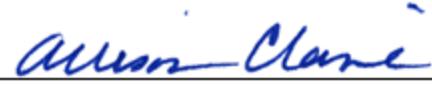
28 ³ Information considered confidential may be filed under seal.

⁴ Plaintiff has alleged that Beck was a nurse.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. Plaintiff's motion for assistance in serving defendant Beck (ECF No. 45) is
3 GRANTED to the extent set forth above.
4 2. Within thirty days of the filing of this order, counsel for Ashe, Miller, Nelson, Singh,
5 Ramos, and Wong shall conduct an inquiry into defendant Beck's last known address and provide
6 that information to the court as set forth above.

7 DATED: March 21, 2024

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9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE

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